IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 521 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

COMMISSIONER OF SALES TAX

Appearance:
MR KH KAJI for Petitioner
MR KT DAVE, AGP for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. By filing this Special Civil Application, the petitioner has challenged issuance of notice dated 20th December, 2000, Annexure : B to the petition, conveying the petitioner that the Commissioner is seeking to exercise revisional jurisdiction.

#. Short facts briefly required to be narrated are as under. The petitioner is engaged in manufacture of pesticides since 1997 at Panoli, District - Bharuch. An application for eligibility certificate was given to the Industries Commissioner as required by the Sales Tax Incentive Scheme (1995-2000). The said application was granted on 23.2.1998 for Sales Tax Incentive. Ad hoc eligibility certificate for Rs. 717 lacs was issued on 23.4.99. Thereafter, Additional Industries Commissioner issued final eligibility certificate for Rs. 2300.28 lacs on 29.4.2000.

#. In between the petitioner made an application on 10.5.98 to the Commissioner for determination of disputed questions as provided by Section 62 of the Gujarat Sales Tax Act, 1969 (hereinafter to be referred to as "the Act"). Under Section 27 of the Act, for carrying out the purpose of the Act, the State Government appointed an officer who is known as Commissioner of Sales Tax. To assist him in execution of his functions, the State Government is authorized to appoint Special Commissioners of Sales Tax, Additional Commissioners of Sales Tax, Deputy Commissioners of Sales Tax, Assistant Commissioners of Sales Tax, officers and other officers and persons. So far as the jurisdiction is concerned, under section 27(3) of the Act, the Commissioner shall have jurisdiction over the whole of the State of Gujarat. The Commissioner is a person exercising all the powers and is performing all the duties conferred or imposed on him by or under the Act. So far as the present case is concerned, sub-section (5) of section 27 being relevant is reproduced hereunder.

"27(5): A Deputy Commissioner shall have and exercise in the area within his jurisdiction all the powers, and shall perform all the duties, conferred or imposed on the Commissioner, by or under this Act; but the Commissioner may, by order published in the Official Gazette, direct that any Deputy Commissioner, or all Deputy Commissioners generally, shall not exercise such powers or perform such duties as are specified in the order, and there-upon such Deputy Commissioner or, as the case may be, all Deputy Commissioner, shall cease to exercise those

powers and perform those duties. The Commissioner may in like manner revoke any such direction and there-upon the powers or duties exercisable or performable by such Deputy Commissioner, or duties exercisable or performable by such Deputy Commissioner, or as the case may be, all Deputy Commissioners before such direction was issued, shall be restored to him or them."

#. In the instant case, the Commissioner delegated powers to the Deputy Commissioner (Legal) and therefore the application which was made under section 62 of the Act was required to be dealt with by Deputy Commissioner (Legal). It is specifically averred in the petition that the Deputy Commissioner forwards a note containing his proposed decision to the Commissioner for his approval and after receiving such approval, the Deputy Commissioner (Legal) would pass appropriate order in consonance with the approval given by the Commissioner. In the instant case, similar procedure was followed and after receiving an approval, order was made on 18.7.98 deciding the disputed questions which were referred to in the application, copy of which is annexed at Annexure :A. Deputy Commissioner (Legal) while answering the questions has considered the matter in detail which has got the approval of the Commissioner. Mr. Kazi, learned counsel appearing for the petitioner - assessee has raised a question that once the Commissioner who has approved the order which has been made by the Deputy Commissioner (Legal), he cannot exercise revisional jurisdiction. As against this, learned Assistant Govt. Pleader, Mr. K.T. Dave submitted that in view of the hierarchy, each officer is exercising powers independently and therefore, it would be open for the higher officer to exercise powers of revisional jurisdiction. In the instant case, according to him, it is open for the Commissioner to exercise revisional jurisdiction. We are not deciding the petition on merits, but only on the question whether in the facts and circumstances of the case, the Commissioner had jurisdiction under section 67 of the Act once the delegatee has exercised powers. Section 67 of the Act reads as under.

"67. REVISION : [R. 63 to 68: forms 47,48,49]

(1) subject to the provisions of section 66 and to any rules which may be made in this behalf;

(a) the Commissioner on his own motion within three years or on application made to him

within one year from the date of any order passed by any officer appointed under section 27 to assist him, may call for and examine the record of any such order and pass such order thereon as he thinks just and proper within twelve months from the date of service of notice for revision;

(b) The Tribunal, on application made to it against an order of the Commissioner (not being an order passed under sub-section (2) of section 65 in second appeal or under clause (a) in revision on an application) within four months from the date of the communication of the Order may call for and examine the record of any such order, and pass such order thereon as it thinks just and proper.

(2) Where an appeal lies under section 65 and no appeal has been filed, no proceedings in revision under this section shall be entertained upon application.

Provided that the proceeding in revision may be entertained upon an application where the applicant satisfies the Commissioner that he had sufficient cause for not preferring an appeal against the order in respect of which an application for revision is made.

(3) No order shall be passed under this section which adversely affects any person, unless such person has been given reasonable opportunity of being heard.

(4) Where the Commissioner or the Tribunal rejects any application for revision under this section, the Commissioner or, as the case may be, the Tribunal shall record the reasons for such rejection."

The contention raised by Mr. Kazi, learned counsel for petitioner is that the Commissioner has delegated powers which he had, and, once delegatee has exercised powers, he has exercised power of a Commissioner. The order which a delegatee has passed is in effect an order made by the Commissioner himself. When an officer exercises

power as Commissioner, the question is whether Commissioner can exercise power to revise the same order? It is not possible to agree with the contentions raised by the learned Asstt. Govt. Pleader that under the Act there is hierarchy and further proceeding is permissible in view of the scheme of the Act. It may be that considering section 27 of the Act, Deputy Commissioner or the Assistant Commissioner may be subordinate to the Commissioner but so far as the powers are concerned, they inhere in the Commissioner and they can be exercised qua the orders of the officers who are appointed by the Commissioner under section 27 of the Act. Powers are either exercised by the Commissioner himself or the Deputy commissioner or the Assistant Commissioner as the case may be. In the instant case, had the order not been approved by the Commissioner, the matter would have been different. Once the Commissioner himself has approved the order, he himself cannot exercise revisional jurisdiction. When the order is made with approval, it is his own order though appears to have been made by the Deputy Commissioner.

#. Learned counsel Mr. Kazi, appearing for the petitioner invited our attention to a decision of the Apex Court in the case of Behari Kunj Sahkari Awas Samiti and another v. State of U.P. and others, [AIR 1997 SC 3123]. In paras 7 and 8 of the said judgment, the Apex Court have pointed out as under.

"7. A mere look at this Section shows that Custodian General can call for any record of proceeding in which any Custodian has passed an order and that exercise has to be undertaken for the purpose of satisfying the Custodian General about the legality or propriety of such an order sought to be revised. It is axiomatic that when the impugned order of the Custodian was already approved by the Custodian-General's delegate, the very same delegating authority, namely, the Custodian - General could not undertake the exercise of being satisfied whether such an approved order of his delegate was legal or proper as that would amount to an exercise of review power which does not flow from the four corners of Section 27 of the Act.

8. Under these circumstances, the revision application moved before the Custodian General was clearly incompetent. It was rightly held not maintainable by the Custodian General and consequently, it is not possible to agree with

> the view which appealed to the High Court in the impugned judgment that the Custodian General could still revise such an order. On the scheme of the Act, such a conclusion is clearly sustainable."

The present case on our hand is almost similar to the above case decided by the Apex Court. In view of these peculiar facts and circumstances of the case, it is required to be stated that in that case before the Apex Court order of Custodian was approved bythe Custodian-General's delegate. The Court pointed out that the Custodian General was right in holding that before him proceedings were not maintainable. Once authority has approved the order, it would not be appropriate for the authority approving the order to exercise powers of revision. In this view of the matter, the petition is required to be allowed on this particular ground only. The petition is allowed. Rule is made absolute accordingly with no order as to costs.

(B.C. Patel, J.) (D.A.Mehta, J.)

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